COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 66 of 2002

New India Assurrance Company Ltd.
… **Appellant.**

Versus

Smt. Meera Devi
and others.
… **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Heard. Admit.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 08-3-2002, passed in M.A.C. Petition No. 221 of 2000, Smt. Meera Devi and others Vs. M/s New India Assurance Co. and another, by the Motor Accident Claims Tribunal/ District Judge, Nainital ***(hereinafter referred to as the Tribunal***), whereby the learned Tribunal has awarded a sum of Rs. 3,80,000/- in the favour of the claimants-respondent nos. 1 to 4 as against the Opposite Party No.1-appellant as mentioned in the impugned order. Aggrieved, the Insurance Company has come up in appeal with a prayed to set aside the impugned judgment and award mainly on the ground that the judgment and award under appeal is perverse because the learned Tribunal failed to consider the Insurance Policy, which did not cover the owner of the vehicle, who himself was travelling by the vehicle.

Brief facts of the case are that the claimant-respondent nos. 1 to 4 filed claim petition under Section 166 of the Act for

compensation for the death of Sri Madho Singh (hereinafter referred to as the deceased) in a motor accident occurred on 1.5.2000, with the allegations that the deceased, who was registered owner of the Jeep bearing No. UP 03-3316, was going with his luggage from Rai Aagar to Chaurmuni to attend a marriage along with two other persons. When the said Jeep reached near the house of Khusal Singh, there were rains. The driver of the Jeep O.P.-respondent no.5 was driving the vehicle rashly and negligently and he lost control over the vehicle with the result the jeep overturned and fell in a ravine. The driver and two other persons jumped down and escaped; but the owner of the Jeep, the deceased could not jump from the vehicle and sustained grievous injuries. He was brought to Berinagh Hospital, where he succumbed to his injuries. The deceased was aged 26 years at the time of his death and was the only bread earner for the entire family, hence the claim petition has been filed by the legal heirs of the deceased.

O.P.No.1- appellant has contested the claim petition and has filed its written statement (12-Kha). It has denied the allegations made in the petition and has pleaded that the answering O.P.-appellant is not liable to pay any compensation for want of registration certificate, fitness certificate, driving licence, etc. Plea of non-compliance of the provisions of Section 64 (VB) of the Insurance Act and that of Section 170 of the Act was also taken. The respondent No.5- O.P.No.2 also filed his written statement 9-Kha and denied his liability to pay compensation. He has further pleaded that the Insurer alone is liable to pay compensation.

On the pleadings of the parties, the learned Tribunal has framed three Issues in the Case. Issues No. 1 related to rash and negligent driving by the driver of the Jeep involved in the accident, resulting in the death of the deceased. Issue No.2 related to holding of valid driving licence by the driver of the vehicle in question. Issue No.3 related to relief. The Learned Tribunal after hearing both the parties and having considered the entire evidence before it,

found on Issue No. 1 that from the evidence of witness adduced on behalf of the claimants, it has been proved on record that the accident in question resulting in the death of the deceased was caused due to rash and negligent driving by the driver of the vehicle involved in the accident. Moreover, death of the deceased stood proved from the Post Mortem report. Accordingly, the learned Tribunal held that the accident in question was result of rash and negligent driving by the driver Dev Singh, the O.P. No.2 (respondent no. 5). On Issue No.2, the Tribunal found that copy of the driving licence (paper no. 6-C/5) has been filed, which had been issued in the name of the driver Dev Singh by the Licencing Authority. It was also found that on the date of accident, the driving licence was in force. Further, the original driving licence is paper no. 23-C/2 filed from the side of the claimants on record. The driver Dev Sigh has not disputed this licence. Accordingly, it has been held that the driver of the Jeep in question was holding a valid driving licence on the date of accident. On Issue No.3, the learned Tribunal has discussed the evidence elaborately. The learned Tribunal found that on the basis of evidence on record, the deceased was earning Rs. 3,000/- per month and out of this amount, the deceased would have spent Rs. 2000/- p.m. towards his family. The age of the deceased was found to be about 26 years, therefore, in the circumstances of the case, multiplier of 15 was applied, thereby the loss of dependency has been assessed as 2000 x 12 x15 = Rs. 3,60,000/-. In addition to it, the learned Tribunal relying on the testimony of the widow of the deceased has awarded Rs. 10,000/- towards funeral expenses and amount of Rs. 10,000/- towards loss of affection, etc. As such, in all, amount of Rs. 3,80,000/- has been awarded by the learned Tribunal in favour of the claimant-respondent nos. 1 to 4.

As regards liability to pay compensation, the learned Tribunal has found the copy of the Insurance Policy paper no. 25-C/2 is on record, which has been filed on behalf of the O.P.-appellant itself. It was also found that the vehicle in question was

duly insured on the date of accident. The learned Tribunal has also dealt with the arguments advanced by both the parties regarding liability to pay compensation by the Insurance Company to the owner of the vehicle. Ultimately, relying on the verdict of the Apex Court in the case of National Insurance Company Vs. Seema Malhotra (II (2001) S.L.T., 229), the learned Tribunal concluded that the Insurance Company is liable to pay compensation to the legal heirs of the owner of the vehicle, the deceased.

We have heard learned counsel for the appellant, Mr. Tanveer Alam Khan as well as learned counsel for the respondent-claimant and have carefully gone through the entire material before us including the impugned judgment and award.

The learned counsel for the appellant has vehemently argued that the deceased himself was driving the vehicle in question and the Insurance Policy does not cover the liability for the owner, therefore, the finding of the learned Tribunal fastening liability on the appellant is perverse and on this score alone, the appeal deserves to be allowed. We have examined the entire matter from all the four corners, we are of the opinion that the argument advanced on behalf of the appellant is not tenable at all. From a bare perusal of the impugned judgment and award, it is borne out that this contention has also been raised before the learned Tribunal and the same has been elaborately dealt with by the learned Tribunal and we are not inclined to accept the argument of the appellant. The Apex Court in its judgment in the case of ***"National Insurance Co. Ltd. versus Seema Molhotra and others" [(2001) 3, Supreme Court Cases, 151]*** has dealt with the relevant provisions of the Insurance Act, 1938. Taking into consideration the verdict of the Apex Court in the aforesaid case, the contention of the appellant has no force, particularly because a copy of the Insurance Policy **(paper no. 25-C/2)** filed by the Opposite Party is on record and it is not disputed at all that the policy in question was not in force on the date of accident. We are of the opinion, that the learned Tribunal

was justified in holding that the appellant-Insurance Company is liable to pay the amount of compensation to the claimants, who are widow and children of the deceased. In view of the matter, the impugned judgment and award does not suffer from any illegality or infirmity. Nothing has been shown to us so as to warrant any interference with the findings recorded by the learned Tribunal. The appeal fails on merit and deserves to be dismissed.

Accordingly, the appeal is dismissed. The impugned judgment and award is upheld. No orders as to costs.

The amount in deposit with this Court shall be remitted to the Motor Accident Claimants Tribunal concerned.

19-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP